IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2005-0047
Appellee,	)	DEPARTMENT B
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
JESUS REYNALDO LOPEZ,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20041953

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Diane Leigh Hunt — Tucson
Attorneys for Appellee

Gail Gianasi Natale — Phoenix
Attorney for Appellant

E S P I N O S A, Judge.

¶1 After a jury trial, appellant Jesus Lopez was convicted of attempted first-degree murder, aggravated assault with a deadly weapon or dangerous instrument, and aggravated assault causing serious physical injury. The trial court imposed concurrent, presumptive

prison terms on all counts, the longest of which was 15.75 years. On appeal, Lopez contends the trial court abused its discretion in precluding evidence he sought to admit to show "adequate provocation" by the victim. We affirm.

¶2 Lopez's younger sister, J., testified that on May 17, 2004, someone sexually assaulted her. At Lopez's urging, J. reported the assault to the police the next day, but she became "frustrated" with the investigation and her interactions with the police. She communicated her frustration to Lopez. At some point, J. identified a man in a photograph as the man who had raped her. The man in the picture was Joseph Molina. The exact timing of J.'s disclosure of Molina's identity to Lopez was a subject of sharply conflicting testimony, but J. testified it occurred on the evening of May 21. It is virtually undisputed that on that same evening, Lopez shot Molina.

¶3 Lopez sought to avoid a conviction for attempted first-degree murder essentially by arguing he only had attempted to commit manslaughter, an offense for which he could have been convicted if the evidence showed he had attempted the offense of second-degree murder "upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim." A.R.S. § 13-1103(A)(2). The trial court permitted him to present evidence in support of this partial defense but, according to Lopez, so "severely limited" the admission of such evidence that it abused its discretion. We disagree.

¶4 We review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *State v. Ruggiero*, 211 Ariz. 262, ¶ 15, 120 P.3d 690, 693 (App. 2005). The

trial court ruled Lopez could introduce evidence that J. had told him she had been raped and had been frustrated by the police response to the crime. The court did not, however, allow Lopez to introduce details about her interactions with the police or the aspects of the investigation that had led to her frustration, including her apparent discontent with a related experience at a hospital. The court also precluded evidence concerning a description of the vehicle driven by J.'s attacker. We agree with the trial court that evidence concerning how police officers or hospital staff interacted with J. or handled the investigation in the days preceding the shooting was irrelevant. Even assuming J.'s frustration had been justified and shared by Lopez, only the presence or absence of "adequate provocation *by the victim*" that results in "a sudden quarrel or heat of passion" is relevant to whether manslaughter has been committed. § 13-1103(A)(2) (emphasis added). No matter how provocative any actions by police officers or hospital staff conceivably could have been, their actions could not be attributed to Molina. We need look no further than the plain language of the statute to find the trial court did not abuse its discretion in precluding that evidence.

¶5 Likewise, the trial court was well within its discretion to preclude evidence about the type of car Molina drove or had access to at the time of the alleged rape. Although that evidence might have been probative of whether Molina had, in fact, sexually assaulted J., that issue was not before the jury. More importantly, what type of car Molina might have driven on May 17 was not probative of whether he had provoked Lopez adequately to bring about any sudden quarrel or heat of passion in which Lopez could have

shot him on May 21. *Cf. State v. Reid*, 155 Ariz. 399, 401, 747 P.2d 560, 562 (1987) (where victim was shot twice while sleeping, "[w]hatever might have occurred before the victim retired for the evening is immaterial [as evidence of sudden quarrel or heat of passion] because the defendant waited two and a half hours before shooting him"). The provocation theory rested solely on an alleged transmission of information from J. to Lopez *in close proximity to the time of the shooting* that Molina had assaulted her. The trial court therefore properly excluded information about the type of car driven by Molina on May 17, which Lopez attempted to elicit from Molina.

¶6 Finding no abuse of discretion in the court's rulings, we affirm Lopez's convictions and sentences.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge